Supreme Court, U.S.
FILED
OCT 30 2003
OFFICE OF THE CLERK

No. 03-684

In The Supreme Court of the United States

ABOLALA SOUDAVAR,
Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN; SAZMANE GOSTARESH VA NOWSAZI-E IRAN,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeals for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS

1 - Whether for "direct effect" considerations in the context of the FSIA, 28 U.S.C. §1605 (a) (2), taxability in the US (as per IRS standards) offers a simple yet effective criteria, since commercial activities have inevitably tax consequences?

2 - Whether the still valid *Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran,* of June, 16, 1957 (8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93), by virtue of its reciprocity clauses and the logic imbedded in them, confers jurisdiction in a US court to an Iranian residing in the United States, for the inadequacy of compensation offers concerning properties taken by the Islamic Government of Iran?

LIST OF PARTIES - All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT (Rule 29(6)) – Pro se Petitioner is acting on his own behalf and as a person.

TABLE OF CONTENTS

Table of Authorities iv
I . Preliminary Remark 1
II . Opinions Below 1
III . Jurisdiction 2
IV . Statutory Provisions 2
V . Statement of the case 2
VI . Sequence of Judicial Events 4
VII . Reasons for granting the writ 5
A . FSIA basis 5
1 . DC Circuit point of view 6
2 . Situs for payment versus situs of effect 6
3 . Violation of contractual obligations 8
4 . Simple test: Tax liability 8
B . The Treaty of Amity 9

INDEX TO APPENDIXES

APPENDIX A – Opinion of the Court of Appeals
APPENDIX B – District Court's Order and Opinion

TABLE OF AUTHORITIES

Cases

Abolala Soudavar et al. v. Islamic Republic of Iran et al., 186 F.3d 671 (5th Cir.Tex., Sep 07, 1999, Cert. Denied 2/22/00..... 4

American International Group v. Islamic Republic of Iran, 493 F. Supp. 522 (D.D.C. 1980) 11

American International Group, Inc. et al. v. Islamic Republic of Iran, et al., Award No. 93-2-3 (19 Dec. 1983), *reprinted in* 4 Iran-US C.T.R. 96. 11

Banco Nacional de Cuba v. Chase Manhattan Bank, 658 F.2d 875 (2d Cir. 1981) 11

Callejo v. Bancomer S.A. 764 F2d (5th Cir. 1985)..... 7

Carey v. National Oil Corp., 592 F.2d 673, 676-77 (2d Cir.1979) (per curiam) 8

Farmanfarmaian v. Gulf Oil Corp., 588 F.2d 880, 882 (2d Cir. 1978) 10

Kalamazoo Spice Extraction Co. v. Provisional Military Government of Socialist Ethiopia, 729 F.2n 422 (6th Cir. 1984) 11

McKesson HBOC, Inc. v. Islamic Republic of Iran, 271 F.3d 1101, 1108 (D.C. Cir. 2001) 12

Song v. Kim, 1993 U.S. Dist. Lexis 17713 (D.N.J. 1993)..... 10

Texas Milling Corporation v. Federal Republic of Nigeria, 647 F.2d 300 (2d Circ. 1981) 7

Weltover v. Republic of Argentina 941 F.2d 145 (2nd Cir. 1991)7, 8

Zedan v. Kingdom of Saudi Arabia, 849 F.2d 1511 (D.C.Cir. 1988) 8

Statutes

28 U.S.C. §1254 (1) 2

The Foreign Sovereign Immunities Act ("FSIA") ..... passim

Treaties

Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, June, 16, 1957; 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93..... 2, 10, 12

Treaty of Friendship, Commerce, and Navigation Between the United States of America and the Republic of Korea, 7th November 1957..... 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2003

PETITION FOR WRIT OF CERTIORARI

I. PRELIMINARY REMARK

Eleven years after the landmark decision *Republic of Argentina v. Weltover,* 504 U.S. 607; 112 S.Ct. 2160 (1992) ("*Weltover*") the concepts of commerciality and "direct effect" are ill understood, and the number of contradictory decisions is on the rise. Amazingly, a simple criteria, that of taxability in the US, has never been applied. If applied, it can put an end to the divergence of "direct effect" interpretations by different Courts.

Similarly, fourteen years after *Argentine Republic v. Amerada Hess Shipping Corp.,* 488 US 428. 109 S. Ct. 683, 692, 102 L. Ed 2d 818 (1989) ("*Amerada Hess*"), the superficial reading of Chief Justice Rehnquist's treatment of the Liberian Treaty of Friendship has led to an unwarranted negation of treaty considerations for the Foreign Sovereign Immunity Act.

This case offers the Court an opportunity to clarify the issues.

II. OPINIONS BELOW

The opinion of the Court of Appeals is not reported but produced in Appendix A. The District Court's Order of dismissal and its Memorandum are both unreported and therefore produced in Appendixes B and C respectively.

III. JURISDICTION

A. The decision of the Court of Appeals was filed on June 10, 2003.

B. A Petition for Rehearing en Banc was filed on July 1st, 2003. It was denied on Aug. 7, 2003.

The jurisdiction of this Court is conferred by 28 U.S.C. §1254 (1).

IV. STATUTORY PROVISIONS

The Foreign Sovereign Immunities Act ("FSIA") §1604, §1605.

Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, June, 16, 1957; 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93 ("Treaty of Amity")

V. STATEMENT OF THE CASE

The following facts were presented to the District Court and the DC Circuit Court and remain uncontroverted:

1. In July of 1979, the Revolutionary Islamic Government of Iran decreed the nationalization of certain sectors of Iranian industry and set the *ground rules* for a government takeover of the Khawar Industrial Group ("KIG")[1]. The decree was subsequently promulgated into law, and stipulated compensation on a fair value basis of the shares to be determined by a third party - a certified public accountant - with a provision for objection and protest.

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[1] The Khawar Industrial Group was a public company created under the laws of Iran, It was one of the largest industrial enterprises in Iran, a licensee of Mercedes-Benz of Germany with truck assembly and manufacturing plants in Tehran, Tabriz and Saveh as well as textile mills in two other cities, with a combined annual sales of $200 million.

2. In July of 1979, Soudavar was a major individual shareholder of KIG and its managing director. Some four months later, Soudavar surrendered the *management* of KIG to Sazman-e Gostaresh va Nowsazi-ye Sanaye Iran ("IDRO") while no share transaction was concluded at that time. The surrender was in recognition of Iran's then majority share-control and in acceptance of the promise of fair value compensation for a share transaction yet to come.
3. Soudavar remained a *registered shareholder* in the books of the company, at least up to 1991.
4. Iran and IDRO (to whom KIG shares had now been transferred) proposed in 1992, an arbitrary transaction by which KIG's shareholders were offered 2 new shares for each 3 original shares, but at the same time they *blacklisted the Soudavar family and banned compensation payment to its members.*
5. A first lawsuit was initiated in 1998 against the ban on payment to Soudavar family members.
6. In May of 1999, Iran finally announced a compensation value for KIG shares based on the average per share book value of the company for the fiscal years 1976 and 1977, adjusted by a coefficient based on the Iranian CPI index from 1979 to present.
7. Iran also *retracted its ban of payment to the Soudavar family* and through IDRO, paid in the year 2000, compensation to family members who accepted their offer, including Soudavar's mother and sister.
8. However, based on compensation formulae applied for American claimants in The Hague and/or universal accounting practices, Iran's 1999 offer for KIG shares should have been approximately 12 times higher.
9. A second lawsuit was subsequently filed in Jul of 2000 for the inadequacy of the 1999 offer.

10. Soudavar's son, Saadi, who was a co-litigant in the 1998 case, was paid $444,000.00 in March of 2002 for the KIG shares that he owned. In computing his compensation in 2002, IDRO applied a higher coefficient than the one it used to calculate the share values of Soudavar's mother and sister in the year 2000.
11. Meanwhile, since 1979, KIG has been continuously operating as a public company, with yearly profit and loss statements.

VI. SEQUENCE OF JUDICIAL EVENTS

The series of judgment for this case show an incomprehensible—but systematic—pattern of bad decisions that each had to be subsequently negated:

- In the 1998 case, the District Court of Houston (Judge Melinda Harmon), flatly stated that it was not "commercial."
- That decision was vacated by the 5th Circuit, who in turn argued that there was a state of continuous non-payment to the Soudavars since 1979, therefore no direct effect in the US.[2] While this argument had a certain logic to it, its decision concerning the Treaty of Amity was judicial subterfuge: through a mistranslation, it turned IDRO into an organ of government and subject to sovereign immunity, even though it was a full-fledged corporation whose immunity should have been waived by article 11 of the treaty.[3]

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[2] *Abolala Soudavar et al. v. Islamic Republic of Iran et al.*, 186 F.3d 671 (5th Cir.Tex., Sep 07, 1999, Cert. Denied 2/22/00: "At the time of the *expropriation*, the Plaintiffs lived in Iran and their property was in Iran. Hence, the financial loss, occurred in Iran. The fact that the Plaintiffs have since become United States residents does not alter this analysis" (emphasis added)

[3] IDRO stands for "Industrial Development and Renovation Organization." This is the official English translation of Sazman-e Gostaresh va Nowsazi-ye Sanaye Iran and not "Department of Expansion

- The decision of the DC District Court for the 2000 case was no better. After a delay of *24 months* it came up with the following:

> "the Fifth Circuit's finding of a lack of "direct effect" is fully applicable because the expropriation and financial loss occurred in Iran when plaintiff lived there and had his property there. Nothing relating to the 1999 Iranian offer compensation constitutes an assumption by Iran of an obligation in the United States that would change the "direct effect" analysis under section 1605 (a)(2)." Appendix B.

- This was of course flatly negated by the fact that, in the interim, my son (who was a co-plaintiff in the 1998 case) had considered the 20 months wait too long, and by March of 2002 (i.e. 4 months before the long awaited decision and unbeknown to the court) had opted for and received compensation. Collateral estoppel now looked as a poor excuse.
- Which brings us to the DC Circuit decision that can only be qualified as "childish" rhetoric:

VII. REASONS FOR GRANTING THE WRIT

A. FSIA basis

In our Original Complaint we invoked the third clause of FSIA § 1605(a)(2):

> ...[3] an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States,

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and New Development of Iran" which the 5th Circuit opted for in order to turn this foreign agency into an organ of government and nullify the agency-specific immunity waiver stipulated in the Treaty of Amity.

to establish that our case fits a commercial exception of the FSIA. For this exception, the "act outside the territory" of the USA was the inadequate 1999 Offer, and the "commercial activity of the foreign state" was the running of KIG as a public company. The 1999 Offer was a new event not discussed in the 1998 case.

1. DC Circuit point of view

Confronted with the undeniable fact that my son had been paid compensation, the DC Circuit had to adopt a new tack with a new twist: there was no direct effect because "appellant rejected the offer, and Iran has not assumed any obligation to make payments in the United States" (emphasis added), Appendix A.

Rejection is what the *Weltover* plaintiffs did when Argentina proposed them a lower payback than initially stipulated; and that didn't deter the Supreme Court from acknowledging direct effect.

2. Situs for payment versus situs of effect

By emphasizing the place of payment as a condition for direct effect, the DC Circuit fell into the trap that, because in *Weltover* nexus was obtained as a result of the interests of the Bonods being paid in New York, an obligation must specify the US as place of payment in order to have a direct effect here. This proves a lack of comprehension of said case. In *Weltover* the main arguments revolved around the question: why should there be a direct effect since the plaintiffs were all *foreign* corporations? The requirement of payment in New York thus created a nexus for the plaintiffs that they otherwise lacked. Had one of them been a US corporation or had had some active presence in the United States, the New York bank issue would have been superfluous:

> "We believe, however, that a bright-line rule limiting the situs of an effect to the foreign plaintiff's domicile, place of incorporation, or principal place of business is too facile an interpretation of the FSIA. Were it so limited, it would be the rare instance in which any foreign plaintiff could be said to suffer a direct effect in the United States," (emphasis added) *Weltover v. Republic of Argentina* 941 F.2d 145, at 152.

The situs of a financial instrumentality may be different from the situs of its "effect." Numerous cases have recognized that the plaintiff's domicile is in fact the situs where the effect of fluctuations in his wealth or income are felt:

- non-payment of principal and interest to US residents-owners in *Callejo v. Bancomer S.A.* 764 F2d (5th Cir. 1985) at 1110, 1112: ("Since the Callejos were located in the United states, the effects of Brancomer's breach were inevitably felt by them there.")
- breach of contract or letter of credit to a Texas corporation in *Texas Milling Corporation v. Federal Republic of Nigeria*, 647 F.2d 300 (2d Circ. 1981) at 312-13.
- Same is echoed in *Weltover v. Republic of Argentina* 941 F.2d 145 (2nd Cir. 1991) , at 152: "When, as here, the breach of an agreement deprives the corporate plaintiff of capital to which it is lawfully entitled there is a direct financial loss to the plaintiff."

More importantly, in *Callejo v. Bancomer,* the 5th Circuit observed that "arcane doctrines regarding place of payment are largely irrelevant." (at 1112). Thus, the assumption of an obligation in the United States is not a prerequisite for "direct effect" as the DC Circuit seems to insinuate.

3. Violation of contractual obligations

Weltover revolved around a breach of agreement similar to what happened in our case. Iran undertook certain obligations in 1979, namely to evaluate the share prices according to fair market value and to pay a compensation accordingly. Iran's initial refusal to pay was in effect a breach of contract that the 5th Circuit interpreted as having occurred in Iran.

More than proposing compensation money, the significance of the 1999 Offer is that it recognized Iran's contractual obligations undertaken in 1979. Accordingly, it had the shares first evaluated, and then proposed the resulting share prices to shareholders. But since Iran's evaluation did not reflect the fair market value of KIG shares, the 1999 Offer must be interpreted in effect as a second contractual violation.

As noted in *Weltover v. Republic of Argentina,* 941 F.2d 145, at 151: "There can be no question that, pursuant to the FSIA, a "direct" effect may occur as the result of a contractual violation. See *Carey v. National Oil Corp.,* 592 F.2d 673, 676-77 (2d Cir.1979) (per curiam)." The "direct effect" of Iran's second contractual violation obviously occurred when it offered an inadequate compensation in 1999.

4. Simple test: Tax liability

Since FSIA §1605 is based on commercial exception, it will necessarily have tax implications somewhere. If those tax implications are felt in the US then the "direct effect' is undeniable. As a criteria it can be tested against any of the more complicated FSIA cases, and with positive results:

Zedan v. Kingdom of Saudi Arabia, 849 F.2d 1511 (D.C.Cir. 1988), a decision that turned right for the wrong reasons. In *Zedan* a breach of contract *in Saudi Arabia* created a

financial loss that did not have a tax impact in the US (because it was an unrealized-gain). On the contrary, had Saudi Arabia confiscated plaintiff's car there, it would have immediately amounted to capital loss with direct effect in the US for a US citizen.

Weltover – the designation of the place of payment per se never constituted a "direct effect." What really triggered the direct effect was the placement of the Bonods in a New York bank which, from then on, had US tax implications: the interest payment to the foreign owners had become, by IRS rules, subject to a US withholding tax

In the instant case, if there was no 1999 offer, the 5th Circuit reasoning would have prevailed: that a loss had occurred in 1979 and nothing had changed ever since. Same would have been true in IRS terms: a capital loss had occurred prior to Soudavar's arrival in the US, with no consequences thereafter here. The 1999 offer, however, changed that equation. If the offer was accepted, it had immediate tax implications, as it did for my son. If rejected, the KIG shares had nonetheless *immediately become* (since the day of that offer), once again, *part of my asset-base*, and irrevocably so. Any reportable fluctuations in that asset-base had, and will have, tax consequences for the IRS ever since 1999.

B. The Treaty of Amity

I had argued in my Original complaint—in a logic that is hard to refute—that Articles III and IV of the treaty confer,[4] in tandem, the following rights to an Iranian in the USA:

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[4] Article III. 2. Nationals and companies of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party, *in all degrees of jurisdiction*, both in *defense and pursuit of their rights*, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms *no less favorable* than those applicable to nationals and companies of

1. If a US citizen has the right to sue Iran through the *Treaty of Amity* or through any other vehicle, then nationals of Iran in the United States shall have equal rights and jurisdictional stature.
2. Since courts have confirmed the rights of US citizens to sue Iran for compensation of property taken by Iran, then as an Iranian in the US, Plaintiff must have the same jurisdictional rights.

The didactic right evoked in the first point above stems from Article III of the treaty which confers jurisdictional rights to Iranians in the US "in all degrees of jurisdiction" and "upon terms no less favorable than those applicable to nationals" of the United States "or of any third country."[5]

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such other High Contracting Party or of any third country. (emphasis added)

Article IV (in relevant parts): Property of nationals and companies of either High Contracting Party, including interest in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

[5] The same didactic reasoning has been used by other courts to determine for instance that citizens of each signatory state must receive "national treatment with respect to ... access to the courts of justice," whether in consideration of the Treaty of Amity when an Iranian citizen was suing a US corporation (*Farmanfarmaian v. Gulf Oil Corp.*, 588 F.2d 880, 882 (2d Cir. 1978)), or in consideration of a similar treaty of friendship when an Irish company was suing another Irish entity (*Irish Nationals,* at 91-92). Although the preceding opinions were expressed in consideration of *forum non conveniens* matters and not jurisdictional ones, the applicable principle is the same as in here.

Similarly, in *Song v. Kim*, 1993 U.S. Dist. Lexis 17713 (D.N.J. 1993), the circuit court reasoned that a similar "national treatment" clause included in the *Treaty of Friendship, Commerce, and Navigation Between the United States of America and the Republic of Korea*, 7th November 1957

As for the second point above, *American International Group v. Islamic Republic of Iran*, 493 F. Supp. 522 (D.D.C. 1980) established the jurisdictional rights of American citizens to sue Iran in a U.S. court in order to obtain full compensation for properties taken by Iran.[6] This was further reaffirmed in *Kalamazoo Spice Extraction Co. v. Provisional Military Government of Socialist Ethiopia,* 729 F.2n 422 (6th Cir. 1984), at 426:

> "There is a striking similarity between the treaty in the present case and the one involved in *American International*. Both treaties contain similar provisions for compensation when property is expropriated by one of the nations that is a party to the treaty. Consequently, American International provides authoritative guidance to us on the use of the treaty exception, and illustrates the error of the district court's decision that the treaty in this case was too ambiguous to allow a court to exercise jurisdiction. *Banco Nacional de Cuba v. Chase Manhattan Bank,* 658 F.2d 875 (2d Cir. 1981) provides an example of the utility of the "prompt, just and effective compensation" standard that is employed in many treaties" (emphasis added).

One should not disregard the letter of the treaty—as Supreme Law of the Land—and the logic imbedded in it, in favor of an a priori thinking that the treaty was only meant to protect US interests in Iran. *There is simply no restrictive*

"elevat[es] a [foreign] judgment to the status of a sister state judgment" and allows a Korean national to enforce it in New Jersey.

[6] The *American International Group* case was referred to The Hague court where it was awarded compensation on the basis of rights conferred by the Treaty of Amity. See *American International Group, Inc. et al. v. Islamic Republic of Iran, et al.*, Award No. 93-2-3 (19 Dec. 1983), *reprinted in* 4 Iran-US C.T.R. 96.

statement to that effect.[7] Should either of the High Contracting Parties feel that these are unforeseen or unwanted outcomes, they have the prerogative to *terminate* the treaty and limit their exposure.[8] Debasing the sanctity of a bilateral treaty and watering down the meaning of its articles should not be a substitute for termination.

Unable to counter our arguments, the DC Circuit Court simply invoked *Amerada Hess* and remarked, without any justification, that the *Treaty of Amity* does not expressly conflict with the FSIA. In *Amerada Hess,* though, the Supreme Court had set a clear pattern to follow, in order to show why an international treaty did not expressly conflict with the FSIA. It first dealt with Maritime Conventions such as the Geneva Convention of the High Seas and the Pan American Maritime Neutrality Convention, and stated:

> "these conventions, however, only set forth substantive rules of conduct and state that compensation shall be paid for certain wrongs.FN10. They do not create private rights of action for foreign corporations to recover compensation from foreign states in the United States''; *Amerada Hess* at 692.

Contrary to the maritime conventions, Article III of the *Treaty of Amity* establishes private rights of action for nationals of Iran in U.S. courts. Therefore, said portion of

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[7] *McKesson HBOC, Inc. v. Islamic Republic of Iran*, 271 F.3d 1101, 1108 (D.C. Cir. 2001) concluded: "As the district court convincingly observed, however, although this language suggests that one party will receive protections within the territory of the other party, it doesn't say that those protections can only be enforced in the territory of the other party." The same reasoning can be applied here: *nothing in the language of the treaty precludes* the conclusion that an Iranian may seek justice in a US court against Iran.

[8] As per Article XXIII (3), the termination of the treaty requires one year advance notice.

Amerada Hess is inapplicable to the *Treaty of Amity* when Articles III and IV are considered in tandem.

The Supreme Court then dealt with the *Treaty of Friendship, Commerce and Navigation Aug. 8, 1938, United States-Liberia*, separately and untangled from its remarks regarding maritime conventions. It rejected that treaty's relevance to issues of immunity waiver, not because it considered said treaty as mere rules of conduct (as for the maritime conventions) but because the rights conferred therein were subject to conformity to "local laws," and the FSIA was considered one such law; *Amerada Hess,* at 693. Such language does not appear in the Treaty of Amity. The fact is that in *Amerada Hess,* Chief Justice Rehnquist had found a *loophole* that allowed a drop-back into the FSIA from the Liberian treaty, *and that loophole does not exist in the treaty with Iran.*

If our arguments are to be properly rejected, another loophole must be found.

Plaintiff prays for reversal of the DC Circuit decision.

Respectfully submitted on October 30th, 2003:

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Appendix A

OPINION OF THE COURT OF APPEALS

BEST AVAILABLE COPY

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 02-7130
September Term, 2002
filed on June 10, 2003

ABOLALA SOUDAVAR,

Appellant,

v.

ISLAMIC REPUBLIC OF IRAN; SAZMANE GOSTARESH VA NOWSAZI-E IRAN,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Edwards, Sentelle, and Garland, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fe. R. App. P. 34 (a)(2); D.C. Cir. Rule 34 (j). It is

ORDERED AND ADJUDGED that the district court's judgment filed September 25, 2002, be affirmed on the ground that the district court lacked subject matter jurisdiction. Appellant brought suit against appellees, the Islamic Republic of Iran and the Sazman-e Gostaresh va Nowsazi-ye Sanaye Iran (collectively, "Iran"), seeking compensation for the 1979 nationalization of his property in Iran. Appellant alleged that subject matter jurisdiction existed under the Foreign Sovereign Immunities Act

("FSIA), and the Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, Aug. 15, 1955, 8 U.S.T. 899 ("Treaty of Amity"). The third clause of the FSIA's "commercial activity" exception states that a foreign state is not immune in an action based upon an act outside the United States in connection with a "commercial activity" of the foreign state elsewhere that causes a "direct effect" in the United States. Iran's 1999 compensation offer does not have a "direct effect" in the United States because appellant rejected the offer, and Iran has not assumed any obligation to make payments in the United States. See Republic of Argentina v. Weltover, 504 US 607, 619 (1992). In addition, Articles III and IV of the Treaty of Amity do not satisfy the treaty exception to the FSIA because the treaty does not "expressly conflict" with the FSIA. See Argentine Republic v. Amerada Hess Shipping Corp., 488 US 428, 442 (1989); Foremost-McKesson, Inc. v. Islamic Republic of Iran, 905 F 2d 438, 452 (D.C. Cir. 1990) cert denied, Islamic Republic of Iran v. McKesson Corp. 516 US 1045 (1996).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P.41(b); D.C. Cir. Rule 41.

Per Curiam

Appendix B

ORDER AND MEMORANDUM OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action no. 00-1717 (JDB)
filed September 25, 2002

ABOLALA SOUDAVAR,

Plaintiff,

vs.

ISLAMIC REPUBLIC OF IRAN; SAZMANE GOSTARESH VA NOWSAZI-E IRAN,

Defendants.

Upon consideration of defendants' motion to dismiss and the submissions of the parties, and for the reasons stated in the Court's Memorandum Opinion issued on this date, it is hereby

ORDERED that defendant's motion to dismiss be and hereby is GRANTED; and it is

FURTHER ORDERED that plaintiff's complaint be and hereby is dismissed with prejudice.

Signed this 24th day of September, 2002.

John D. Bates
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action no. 00-1717 (JDB)
filed September 25, 2002

ABOLALA SOUDAVAR,

Plaintiff,

vs.

ISLAMIC REPUBLIC OF IRAN; SAZMANE GOSTARESH VA NOWSAZI-E IRAN,

Defendants.

MEMORANDUM OPINION

Plaintiff Abolala Soudavar ("plaintiff") has sued the Islamic Republic of Iran and one of its agencies, Sazman-E Gostaresh va Nowsazi-Ye Sanaye Iran (collectively "Iran"), seeking compensation for the 1979 nationalization of his property by Iran. Subject matter jurisdiction in this Court is invoked pursuant to the Foreign Sovereign Immunities Act ("FSIA") and the Treaty of Amity. Defendants have moved to dismiss this action under Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction over the subject matter, on the ground that this action is barred by collateral estoppel.

Background

In 1998, plaintiff and his son filed an action I federal court in Texas against several defendants, including the defendants in this action, also seeking compensation for the 1979 nationalization of plaintiff's property in Iran. Although the District Court dismissed the case for failure to state a claim, the Fifth Circuit instead dismissed for lack of subject matter jurisdiction. See Soudavar v. Islamic Republic of Iran,

186 F. 3d 671 (5th Cir. 1999) (hereinafter "Soudavar v. Iran I"). The Court in Soudavar v. Iran I described the relevant factual background as follows:

> Abolala Soudavar and Saadi Soudavar ("Plaintiffs") were substantial shareholders in the Khawar Industrial Group ("KIG"), one of the largest industrial enterprises in Iran and licensee of Mercedes-Benz. In 1979, Iran expropriated the Plaintiffs' property and nationalized KIG. Although the law instituting the nationalization made certain provisions for the compensation of KIG's shareholders, the Plaintiffs were never paid.
>
> After the expropriation, the Plaintiffs moved to the United States and Saadi Soudavar has become a United States citizen. In 1991, Iran organized a gathering in New York aimed at persuading Iranian businessmen to return home. At this meeting, the Plaintiffs asked Iranian officials about the status of their property, and were told to return home if they wanted it back. In 1992, Iran adopted a resolution to compensate parties whose property had been expropriated. Under the resolution, eligible shareholders could elect to receive up to two-thirds of the shares previously owned, minus a number of fees. The Plaintiffs elected not to accept this offer. The Plaintiffs alleged that Iran later blacklisted them from this offer.

186 F.3d at 673. In this action, plaintiff alleges as well that in 1999 Iran made a compensation offer that was accepted by some of his family members but rejected by plaintiff as inadequate. Although plaintiff continues to seek precisely the same relief as sought in Soudavar v. Iran I, he contends that this action is a new claim because of the 1999 compensation offer by Iran.

In Soudavar v. Iran I, the Fifth Circuit held that the commercial activities exception to sovereign immunity under the FSIA 28 USC §1605 was not available to plaintiff. 186

F.3d at 674. The Court observed that: "In this case, the acts complained of, whether sovereign or commercial, lack the requisite jurisdictional nexus with the United

States." Id. The Court first rejected any reliance on a 1991 meeting in New York between an Iranian representative and plaintiff as a basis for jurisdiction, and then concluded as follows:

> ...the Plaintiffs' [sic] contend that we have jurisdiction over this matter because Iran's refusal to pay for the expropriated shares caused direct effect in the United States--lost income and lost tax revenue. We disagree. "[A]n effect is direct if it follows as an immediate consequence of the defendant's activity." *Republic of Argentina v. Weltover,* 504 US 607, 619 (1992). At the time of the expropriation, the Plaintiffs lived in Iran and their property was in Iran. Hence, the financial loss, occurred in Iran. The fact that the Plaintiffs have since become United States residents does not alter this analysis.

Id. The Court also rejected the Treaty of Amity as a basis for jurisdiction, observing that "[t]he limited waiver of immunity in the Treaty of Amity 'extends only to enterprises of Iran, not Iran itself.'" Id. at 674-75 (citations omitted).

Discussion

Defendants' motion to dismiss is based on the argument that the jurisdictional issues resolved by the Fifth Circuit are identical to those presented here, and thus this action is barred by collateral estoppel. The Court agrees and therefore grants defendants' motion.

Collateral estoppel, or issue preclusion, precludes parties from contesting or relitigating issues already determined by a court of competent jurisdiction. Allen v. McCurry, 449 U.S. 90, 94 (1980); Montana v. United States, 440 U.S. 147, 153-54 (1979). Plainly, collateral estoppel applies to issues of jurisdiction as well as to the merits. See Cutler v. Hayes, 818 F.2d 879, 888 (D.C. Cir. 1987) (res judicata and collateral estoppel apply to questions of

jurisdiction); Safir v. Dole, 718F.2d 475, 481 n. 4 (D.C. Cir. 1983) (collateral estoppel applies to jurisdictional issues); Dozier v. Ford Motor Co., 702 F.2d 1189, 1191 (D.C. Cir. 1983) (res judicata applies to decisions relating to jurisdiction); see also Underwriters Natl. Assurance Co. v. North Carolina Life & Accident Ins. Guar. Ass'n, 455 U.S. 691, 706-07 n. 16 (1982); Stoll v. Gottlieb, 305 U.S.165, 172 (1938). Importantly, a "valid jurisdictional judgment has preclusive effect, we note, even if erroneous." Cutler, 818 F.2d at 888.

Here, the only bases alleged by plaintiff upon which this Court could have subject matter jurisdiction over this action are the FSIA and the Treaty of Amity. Defendants content that both those jurisdictional issues were resolved against plaintiff by the Fifth Circuit and thus subject matter jurisdiction is precluded by the application of collateral estoppel.

The Fifth Circuit unequivocally held that the commercial activity exception to sovereign immunity under section 1605(a)(2) of the FSIA was not available to plaintiff because the requisite jurisdictional nexus with the United States was lacking. The primary basis for the decision was that the Iranian nationalization of plaintiff's property had no "direct effect" in the United States, relying on Republic of Argentina v. Weltover, 504 U.S. 607, 618 (1992). The Fifth Circuit observed:

> At the time of the expropriation, the Plaintiffs lived in Iran and their property was in Iran. Hence, the financial loss, occurred in Iran. The fact that the Plaintiffs have since become United States residents does not alter this analysis.

186 F.3d at 674. Plaintiff's only response to that clear holding is that Iran's 1999 offer of compensation creates a

new claim that makes the "direct effect" analysis of the Fifth Circuit inapplicable. The Court disagrees. There is no meaningful distinction between Iran's failure to pay any compensation, which occurred prior to the first suit, and the alleged inadequacy of the subsequent compensation offer by Iran. In each instance, plaintiff seeks a judgment for the full value of property allegedly taken from him in Iran, and in each circumstance, the Fifth Circuit's finding of a lack of "direct effect" is fully applicable because the expropriation and financial loss occurred in Iran when plaintiff lived there and had his property there. Nothing relating to the 1999 Iranian offer of compensation constitutes an assumption by Iran of an obligation in the United States that would change the "direct effect" analysis under section 1605 (a)(2). Whether the Fifth Circuit was right or wrong in its conclusion that the commercial activity exception to sovereign immunity was unavailable to plaintiff is immaterial. See Cutler, 818 F.2d at 888. What matters is that the issue was decided conclusively against plaintiff in the earlier action, which it was, and plaintiff has raised no new facts or claims which undercut the validity of that prior determination by the Fifth Circuit that subject matter jurisdiction under the FSIA is lacking.

Plaintiff's assertion of jurisdiction under the Treaty of Amity fare no better. The Fifth Circuit rejected that basis for subject matter jurisdiction as well, holding that "[t]he limited waiver of immunity in the Treaty of Amity "extends only to enterprises of Iran, not Iran itself." 186 F.3d at 674-75 (citations omitted). Hence, collateral estoppel precludes relitigation of that jurisdictional issue in this action as well.[9]

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[9] To the extent that plaintiff argues that this action invokes Articles III and IV of the
Treaty of Amity, while other articles were invoked in Soudavar v. Iran I, that issue is addressed

Conclusion

For the foregoing reasons, defendants' motion to dismiss is granted. The precise jurisdictional issues under both the FSIA and the Treaty of Amity were resolved against plaintiff by the Fifth Circuit, and collateral estoppel or issue preclusion thus precludes plaintiff from relitigating those issues. Accordingly, this Court lacks subject matter jurisdiction over this action. A separate order will be issued on this date.

Signed this 24th date of September, 2002.

John D. Bates
United States District Judge

Further in the Court's decision entered today in the companion case of Soudavar v. Islamic Republic of Iran, Civil Action No. 00-2506 (D.D.C.)

Supreme Court, U.S.
FILED
DEC 1 _ 2003
OFFICE OF THE CLERK

No. 03-684

IN THE
Supreme Court of the United States

ABOLALA SOUDAVAR,

Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN AND
SAZMANE GOSTARESH VA NOWSAZI-E IRAN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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INTRODUCTION

This *pro se* petition is a companion to another *pro se* petition filed simultaneously by the petitioner ("Soudavar") in No. 03-685. The jurisdictional questions raised in both petitions are identical, *viz.*, whether the district court lacked competence to adjudicate Soudavar's claims against Iran for the taking of his property. The instant petition concerns Iran's taking of petitioner's shares in an Iranian company. The petition in No. 03-685 concerns the taking of parcels of land. Both cases were dismissed for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA") and under the Treaty of Amity with Iran. The facts in the instant petition differ from those in the companion petition only in one respect: Soudavar's rejection of Iran's offer to pay compensation for the nationalized KIG shares.

This litigation has a long and arduous history, due in large measure to Soudavar's lack of familiarity with American law, his disregard of the principle of issue preclusion and his penchant for filing consecutive *pro se* suits.

STATEMENT

Soudavar is an Iranian national and a resident of Houston, Texas. In 1988 he instituted the first suit against the Islamic Republic of Iran ("Iran") and one of its agencies ("Sazmane") in federal court in Houston. The complaint sought compensation for the taking of his shares of stock in an Iranian enterprise, the Khawar Industrial Group ("KIG"). He asserted subject matter jurisdiction under the Foreign Sovereign Immunities Act's ("FSIA") commercial activities exception to immunity, 28 U.S.C. §1605(a)(2), and under the Treaty of Amity with Iran.[1] Although the

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[1] Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran. June 6, 1957, 8 U.S.T 899, T.I.A.S. No. 3853.

Iranian law under which his shares were taken made provision for compensating former shareholders, Iran had made no offer of compensation at the time Soudavar instituted the Houston action. The Fifth Circuit vacated an improper dismissal by the district court and dismissed the suit for lack of subject matter jurisdiction under the FSIA and under the treaty.[2] This Court denied certiorari.

During the pendency of Soudavar's suit in Houston, Iran offered to former shareholders in KIG compensation under a formula that was accepted by members of Soudavar's immediate family, including his mother, sister, and eventually his son (who had been a co-plaintiff in the Houston action). Soudavar declined the offer; he considered the offered compensation to be substantially less than the compensation that Iran paid to American claimants in the Iran/United States Claims Tribunal in The Hague. He felt that he could secure a more favorable recovery by suing Iran in the a United States.

In July 2000 Soudavar instituted the instant action against Iran and Sazmane, once again seeking compensation for the value of his shares in the KIG enterprise.[3] He again sought to invoke the district court's jurisdiction under the FSIA's commercial exception to sovereign immunity, 28 U. S. C. §1605(a)(2), and under the Treaty of Amity. The district court dismissed the suit on collateral estoppel grounds since the absence of subject matter jurisdiction under the FSIA and under the Treaty had been established conclusively by the Fifth Circuit (Pet. App. B, at 6). The court of appeals affirmed the dismissal in a brief per curiam judgment on the ground that the

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[2] *Soudavar v. Islamic Republic of Iran*, 186 F.3d 671 (5th Cir.), *cert. denied*, 528 U.S. 1187 (1999).

[3] At the same time he filed a second action which is the subject of the petition in No. 03-684.

district court lacked subject matter jurisdiction under any of the bases invoked by Soudavar (Pet. App. A at 2).

Soudavar contends that the core of his grievance in the present suit is not Iran's taking of his KIG shares (which he acknowledged was the basis of his earlier suit in the Fifth Circuit), but rather the inadequate settlement offered to him by Iran. Citing *Republic of Argentina v. Weltover*, 504 U.S. 607 (1992), he argues that the unsatisfactory compensation offer that was communicated to him in 1999 in the United States brought about the requisite "direct effect" in this country because he is a resident of the United States. The contention is misguided. Unlike in *Weltover*, where Argentina breached a contractual obligation to make payment in dollars in New York, here Iran merely extended an offer of compensation that Soudavar rejected. Soudavar does not suggest that Iran intended to pay the offered compensation in the United States. It is manifest that Soudavar can derive no comfort from the *Weltover* Court's decision.

Soudavar contends in the alternative that there was a "direct effect" in the United States because as a result of Iran's inadequate offer he was deprived of income in this country and the United States Treasury lost tax revenues. The argument is plainly frivolous, since Iran's offer did not constitute a legal commitment to pay compensation in the United States.

REASONS FOR DENYING THE WRIT

The court of appeals correctly held that Soudavar's claim for compensation was not cognizable under the "direct effect" clause of the commercial activity exception to sovereign immunity, 28 U.S.C.§ 1605(a)(2), and under the Treaty of Amity; as noted, Iran had assumed no obligation to pay compensation in the United States. *Weltover* established firmly that a nonpayment of an indebtedness by a foreign state causes a "direct effect" in the United States

only if the debtor state is legally obligated to make the payment in the United States. Moreover, a state's payment of compensation for nationalized property is plainly a sovereign and not a commercial act that falls within the FSIA's commercial exception to sovereign immunity. For these reasons, Soudavar's renewed attempt to vest subject matter jurisdiction under the FSIA was futile.

The court of appeals further found that Soudavar's insistence that the Treaty of Amity provided an alternate jurisdictional basis for his suit was without substance. In the last four years two different circuit courts of appeals – the Fifth Circuit in its earlier decision and the court of appeals below (Pet. App. A at p. 2) – considered treaty argument and found it wanting.

Rather than repeat our response to Soudavar's treaty argument, we respectfully refer the Court to our opposition brief in No. 03-685, at 3-4, where the treaty issue is addressed.

CONCLUSION

In ruling that the FSIA and of the Treaty of Amity did not provide subject matter jurisdiction for Soudavar's compensation claim against Iran the court of appeals followed settled precedent. Its affirmance of the district court's dismissal of the suit was correct as a matter of law. Soudavar's instant petition presents no occasion for further review by this Court and should, therefore, be denied.

Dated: December 1, 2003

Respectfully submitted,

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